

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

TEMINA WEILAND AND
SANDRA VISGER,

Plaintiffs,

vs.

Case No.: 19-cv-13115

Hon.: Sean F. Cox

K&M MEDICAL & CATASTROPHIC
MANAGEMENT, LLC., a Michigan limited
liability company, and KARRI DOTSTRY,

Defendants,

**SAVATORE, PRESCOTT & PORTER,
PLLC.**

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Attorneys for Plaintiffs

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NOTICE OF HEARING

PLEASE TAKE NOTICE THAT *Joint Motion to Approve Settlement and For Entry of Order of Dismissal with Prejudice and without Attorney's Fees and Costs* will be brought on for hearing before the Honorable Sean F. Cox on a date to be determined by this Court.

Respectfully Submitted

GASIOREK MORGAN GRECO
McCAULEY & KOTZIAN, PC

By: /s/ Sam Morgan
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**JOINT MOTION TO APPROVE SETTLEMENT AND FOR ENTRY OF
ORDER OF DISMISSAL WITH PREJUDICE AND WITHOUT
ATTORNEYS' FEES OR COSTS**

Defendants K&M Medical & Catastrophic Management, LLC. (“K&M”) and Karri Dotstry (“Dotstry”), and Plaintiffs, Temina Weiland (“Weiland”) and Sandra Visger (“Visger”), by and through their respective counsel, move this Honorable Court to approve the settlement of Weiland’s and Visger’s respective Fair Labor Standards Act (“FLSA”) claims and to enter a Stipulated Order of Dismissal With Prejudice and Without Costs or Attorney Fees. In support of their joint motion, the parties state the following:

1. On or about March 5, 2019, K&M filed a civil action in Oakland County Circuit Court (in Michigan) against Weiland, based upon a Weiland’s breach of a written non-solicitation agreement and her common law duty of loyalty both before and after her termination from employment by K&M on February 11, 2019 (hereinafter referred to as the “OCCC litigation”).

2. Weiland was employed by K&M from March 16, 2018 to February 11, 2019.

3. The OCCC litigation has been ongoing and another defendant (Weiland’s subsequent employer) was eventually joined as a co-defendant with Weiland.

4. The court in the OCCC litigation directed that the parties to that litigation go to and complete a facilitative mediation by mid-October 2019.

5. In early May 2019, Weiland and Visger notified K&M and Dotstry that they were both going to file a lawsuit against K&M and Dotstry in federal court asserting various employment rights claims, including claims under the Fair Labor Standards Act (the “FLSA”) challenging K&M’s treatment of Weiland and Visger as being exempt from overtime pay.

6. Visger was employed by K&M from December 18, 2018, until her termination on March 13, 2019, and she was paid on a salaried basis.

7. Despite the fact that she was not a party in the OCCC litigation, the parties agreed to include Visger in the facilitative mediation that was scheduled in that litigation. The facilitative mediation took place on October 2, 2019.

8. On October 7, 2019, with the assistance of the mediator, the parties (including Weiland’s co-defendant in the OCCC litigation) reached a comprehensive confidential settlement of both the OCCC litigation and the claims that Weiland and Visger had threatened to file in federal court, which include their respective FLSA claims against K&M and Dotstry.

9. Because the settlement agreement is confidential, the parties are not filing a copy with this Motion. However, the parties will produce a copy of the settlement agreement at any hearing the Court may set or upon the Court’s order.

10. Because Weiland and Visger were asserting violations of the FLSA, approval of their pre-suit settlement of those claims is required either from this Court

or the U.S. Department of Labor. *See* 29 U.S.C. § 216; Exhibit 1, *Snook v. Valley Ob-Gyn Clinic, P.C.*, No. 14-CV-12302, 2015 WL 144400 at *1 (E.D. Mich. Jan. 12, 2015) (citations omitted).

11. Courts approve FLSA settlement agreements where the overall terms of the settlement are fair and reasonable. *Id.* To determine the fairness of a settlement under the FLSA, Courts consider whether the agreement reflects a reasonable compromise of disputed issues. *Id.* Normally, a settlement is approved where it is the result of contentious arm's-length negotiations that were undertaken in good faith by counsel, and serious questions exist such that the value of an immediate recovery outweighs the possibility of further relief after protracted and expensive litigation. *Id.* at *2.

12. Here, the parties agree that the settlement is fair and reasonable and request that the Court approve the settlement. This settlement was reached through the extensive negotiations between the parties' counsel, with the assistance of a neutral mediator who is an experienced employment rights litigator, while having access to the evidence that had a bearing on Weiland's, Visger's, K&M's and Dotstry's best and worst-case scenarios regarding potential overtime pay liability.

13. The only reason for Weiland and Visger actually filing this action, was for the purpose of securing this Court's approval of the settlement.

14. The overall settlement reflects a reasonable compromise of issues actually in dispute, the settlement was reached in an adversarial context in which both parties were represented by competent and experienced counsel, and the totality of the proposed settlement is fair and reasonable.

15. Therefore, for the reasons stated above, the parties respectfully request that the Court approve the settlement and enter the attached Stipulated Order for Dismissal with Prejudice and without Costs or Attorney Fees (Exhibit A).

Respectfully Submitted:

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Date: October 23, 2019

CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2019, I filed a true and correct copy of Joint Motion to Approve Settlement and for Entry of Order of Dismissal with Prejudice and without Attorneys' Fees or Costs with the Clerk of the Court using the ECF filing system which will send notification to all parties or their counsel of record.

Dated: October 23, 2019

/s/ Randi Donegan
Randi Donegan

EXHIBIT A

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**ORDER APPROVING SETTLEMENT AND DISMISSING CASE WITH
PREJUDICE AND WITHOUT ATTORNEYS' FEES OR COSTS**

This matter having come before the Court on the parties' Joint Motion to approve the settlement of Plaintiff's claims, and the Court being fully advised of the premises;

IT IS HEREBY ORDERED that the comprehensive confidential settlement negotiated between the parties is approved;

IT IS FURTHER ORDERED that this matter is now dismissed with prejudice and without attorneys' fees or costs to any party. Entry of this order resolves all pending claims and closes the case.

Hon. Sean F. Cox,
United States District Court Judge

Dated: _____

Approved as form and content:

GASIOREK MORGAN GRECO
McCAULEY & KOTZIAN, PC

SAVATORE, PRESCOTT & PORTER,
PLLC.

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